

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

CITY OF CLEVELAND ex rel.	:	Case No.
CLEVELAND TAXPAYERS FOR THE	:	
OHIO CONSTITUTION,	:	
3403 Berea Road	:	
Cleveland, Ohio 44111,	:	
	:	
and	:	
	:	
CITY OF CLEVELAND ex rel.	:	
DOROTHY MCGUIRE,	:	
3403 Berea Road	:	
Cleveland, Ohio 44111,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
CITY OF CLEVELAND,	:	
601 Lakeside Ave.	:	
Cleveland, Ohio 44114,	:	
	:	
Defendant.	:	

COMPLAINT FOR STATUTORY INJUNCTION

Now come Plaintiffs Cleveland Taxpayers for the Ohio Constitution (“CTOC”) and Dorothy McGuire and for their Complaint against Defendant City of Cleveland (the “City”) state as follows:

INTRODUCTION

1. Plaintiffs bring this taxpayer action for an injunction under the authority of R.C. 733.56 and R.C. 733.59, which authorize a taxpayer to institute a lawsuit against a municipal

corporation in its own name, on behalf of the municipal corporation. Pursuant to those statutes, Plaintiffs request an injunction against the City enjoining the abuse of its corporate powers entailed by the adoption and administration of Ordinance No. 1745-08 which establishes the City's Domestic Partner Registry (the "Ordinance"). This Ordinance creates and recognizes a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage, in violation of Article XV, Section 11 of the Ohio Constitution. The adoption and administration of the Ordinance are also beyond the scope of authority granted to the City pursuant to Article XVIII, Section 3 of the Ohio Constitution.

PARTIES

2. CTOC is an unincorporated association, several members of which are taxpayers and residents of the City.

3. Dorothy McGuire is a taxpayer and resident of the City, and a member of CTOC.

4. Plaintiffs bring this action to enjoin operation of the Ordinance on behalf of the City and for the benefit of the public.

5. The City of Cleveland is a municipal corporation created under the laws of the State of Ohio, and is a political subdivision thereof. It is governed by a charter.

ALLEGATIONS

The Domestic Partnership Registry

6. On December 8, 2008, the Cleveland City Council voted to pass Ordinance No. 1745-08, which created the City's Domestic Partner Registry. A true and accurate copy of the Ordinance, as codified in Chapter 109 of the City of Cleveland Codified Ordinances, is attached as *Exhibit A* and made a part hereof.

7. The Ordinance provides for the creation of a new legal status between two individuals. Specifically, it creates the relation of “domestic partnership,” patterned after the marriage laws in Ohio. To establish a domestic partnership, both individuals must file a Declaration of Domestic Partnership with the City affirming that they meet all of the following qualifications:

- Both individuals share a common residence;
- Both individuals affirm that they have a committed relationship and share responsibility for each other’s common welfare;
- Neither individual is married to another person;
- Neither individual is part of an existing domestic partnership with another individual;
- Each individual is 18 years of age or older; and
- The two individuals are not related by blood in a way that would prevent them from being married to one another in Ohio.

8. The Ordinance also prescribes the process for filing, terminating, and registering domestic partnerships.

Plaintiffs’ Request to the City to Apply for an Injunction to Restrain the Abuse of Corporate Powers Entailed by the Adoption and Administration of the Ordinance

9. R.C. 733.56 provides that when a municipal corporation abuses its corporate powers, “the city director of law shall apply, in the name of the municipal corporation, to a court of competent jurisdiction for an order of injunction to restrain the ... abuse of its corporate powers.”

10. R.C. 733.59 provides that if a taxpayer makes written request to the City Solicitor to pursue the injunctive relief provided in R.C. 733.56, and the Solicitor fails to make application

for such relief, the taxpayer is authorized to institute a lawsuit for an injunction in his own name, on behalf of the municipal corporation.

11. On May 7, 2009, Plaintiffs through legal counsel sent a letter to City Director of Law Robert J. Triozzi, requesting that his office file a lawsuit in this court seeking to enjoin the operation and administration of the Ordinance because it constitutes an abuse of the City's corporate powers.

12. As of August 11, 2009, the Law Director has neither brought the lawsuit requested by Plaintiffs through counsel, nor has he otherwise replied to that request.

13. Pursuant to R.C. 733.59, Plaintiffs institute this action to enjoin the operation and administration of the Ordinance as an abuse of the City's corporate powers, in that it is contrary to Article XV, Section 11 of the Ohio Constitution and beyond the scope of authority granted to the City pursuant to Article XVIII, Section 3 of the Ohio Constitution.

FIRST CLAIM FOR INJUNCTION
(Violation of Ohio Marriage Amendment)

14. Plaintiffs incorporate the allegations in Paragraphs 1 through 13 as if set forth fully herein.

15. The people of the State of Ohio have recently amended their Constitution to prohibit the government from nouveau policy experimentation further impacting the already embattled institution of marriage.

16. Article XV, Section 11 of the Ohio Constitution states:

Only a union between one man and one woman may be a marriage valid in or recognized by this state and its political subdivisions. This state and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage.

17. The City's Ordinance is in conflict with the second sentence of the Marriage Amendment, in that it creates and recognizes a "legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage."

18. Thus, the City's adoption and administration of the Ordinance constitutes an abuse of corporate power which should be enjoined under R.C. 733.56.

19. The enforcement of Article XV, Section 11 of the Ohio Constitution is a matter of great public import and interest, implicating the rule of law and the people's constitutional power to bind the state and its political subdivisions to limited exercises of governmental authority.

SECOND CLAIM FOR INJUNCTION
(Violation of Ohio Home Rule Amendment)

20. Plaintiffs incorporate the allegations in Paragraphs 1 through 19 as if set forth fully herein.

21. Article XVIII, Section 3 of the Ohio Constitution states

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary, and other similar regulations as are not in conflict with general laws.

22. The Ordinance does not pertain to the government or administration of the internal affairs of the City; it is, therefore, not authorized by the City's power of local self-government.

23. The Ordinance contains no element of coercion, nor does it promote the general health, safety, welfare or morals of the City; it is, therefore, not authorized by the City's police power.

24. The adoption and administration of the Ordinance are beyond the scope of authority granted to the City pursuant to Article XVIII, Section 3 of the Ohio Constitution.

25. Thus, the City's adoption and administration of the Ordinance constitute an abuse of corporate power which should be enjoined under R.C. 733.56.

26. The enforcement of Article XVIII, Section 3 of the Ohio Constitution is a matter of great public import and interest, implicating the rule of law and the limited powers of government.

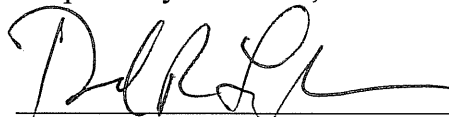
WHEREFORE, Plaintiffs pray for judgment against Defendant and request that the Court:

- A. Adjudge, decree and declare the rights and other legal relations of the parties to the subject matter in controversy in order that such declarations shall have the force and effect of final judgment and that the Court retain jurisdiction over this matter for the purpose of enforcing its Orders;
- B. Pursuant to R.C. 733.56, R.C. 733.61 and Civ.R. 65, preliminarily and permanently enjoin the operation and administration of the Domestic Partnership Registry by the City and its elected and appointed members, employees and agents;
- C. Pursuant to R.C. 733.61 and other applicable law, award Plaintiffs their costs and expenses incurred in bringing this action, including their reasonable attorneys' fees; and
- D. Grant such other and further relief as the Court deems equitable, just and proper.

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** pending admission pro hac vice
(application forthcoming)*

Respectfully submitted,



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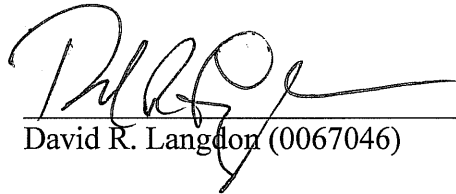
CERTIFICATE OF SERVICE

The undersigned certifies that, pursuant to R.C. 2721.12, copies of the foregoing Complaint and related motions were served by regular mail, this 11th day of August, 2009, upon the following:

Richard Cordray
Ohio Attorney General
30 E. Broad Street, 17th Floor
Columbus, OH 43215-3428

And a courtesy copy to:

Robert J. Triozzi, Esq.
Director of Law
City of Cleveland
601 Lakeside Ave., Room 106
Cleveland, Ohio 44114



David R. Langdon (0067046)

PART ONE — ADMINISTRATIVE CODE

Title I — General Provisions

Chapter 109 — Domestic Partnership Registry

Complete to December 31, 2008

109.01 Definitions

As used in this Chapter:

(a) “Domestic partnership” refers to the non-marital committed relationship of two adults of the same or different sex, who share a common residence and affirm that they share responsibility for each other's common welfare, and have signed and filed a Declaration of Domestic Partnership with the city.

(b) “Share a common residence” means that both domestic partners share the same residence. It is not necessary that both domestic partners have title to the property where they reside or the legal right to possess the common residence. Two people may share a common residence even if one or both have additional residences. Domestic partners do not cease to share a common residence if one leaves the common residence but intends to return. Nothing in this definition or chapter shall affect or supersede any residency requirement set forth in Section 74 of the City's Charter. Shared common residence does not have the same meaning as bona fide residence.

(c) Domestic partners will be deemed to have an “committed” relationship and to “share responsibility for one another's common welfare” if they execute a Declaration of Domestic Partnership affirming that such facts are true.

(Ord. No. 1745-08. Passed 12-8-08, eff. 1-7-09)

109.02 Domestic Partnership Criteria

To establish a domestic partnership, both individuals must file a Declaration of Domestic Partnership with the City affirming that they meet all of the following qualifications:

(a) Both individuals share a common residence;

(b) Both individuals affirm that they have an committed relationship and share responsibility for each other's common welfare;

(c) Neither individual is married to any other individual;

(d) Neither individual is part of an existing domestic partnership with any third party;

(e) Each individual is 18 years of age or older; and

(f) The individuals are not related to one another by blood in a way that would prevent them from being married to one another in this State.

(Ord. No. 1745-08. Passed 12-8-08, eff. 1-7-09)

109.03 Filing

(a) Filing Location. Two individuals seeking to become domestic partners must complete and file a Declaration of Domestic Partnership with the Division of Assessments and Licenses.

(b) Filing Prohibition. No individual who has previously filed a Declaration of Domestic Partnership in this City may file a new Declaration of Domestic Partnership until a Notice of Termination of Domestic Partnership has been filed with the City. However, this prohibition shall not apply if the previous domestic partnership ended because one of the domestic partners is deceased.

(Ord. No. 1745-08. Passed 12-8-08, eff. 1-7-09)

109.04 Registration

(a) Registration Forms. The Commissioner of Assessments and Licenses shall develop “Declaration of Domestic Partnership” and “Notice of Termination of Domestic Partnership” forms, and shall not add to or alter the requirements listed in Section 109.02 of this Chapter.

(b) Registration Requirements. The "Declaration of Domestic Partnership" form shall require each registrant to:

- (1) Affirm that he or she meets the requirements of Section 109.02 of this Chapter;
- (2) Provide a mailing address;
- (3) Sign the form under penalty of perjury; and
- (4) Have a notary public acknowledge his or her signature.

(c) Availability of Forms. The city shall have declaration and termination forms available at the Division of Assessments and Licenses.

(d) Administrative Fee. The city shall charge an administrative fee of \$55 to persons filing a Declaration of Domestic Partnership. No fee shall be charged for the filing of a Notice of Termination of Domestic Partnership.

(e) Partnership Registration. The city shall register the Declaration of Domestic Partnership in a registry and return a copy of the declaration form to the domestic partners at the address provided as their common residence.

(f) Termination Registration. The city shall register the Notice of Termination of Domestic Partnership pursuant to the requirements set forth in Section 109.05 of this Chapter. (Ord. No. 1745-08. Passed 12-8-08, eff. 1-7-09)

109.05 Termination

(a) Termination. A domestic partnership ends when:

- (1) One of the domestic partners dies; or
- (2) A Notice of Termination of Domestic Partnership has been filed by one or both domestic partners with the city.

(b) Notice of Termination. If the facts affirmed in the Declaration of Domestic Partnership cease to be true, one or both parties to a domestic partnership shall file a Notice of Termination of Domestic Partnership with the Division of Assessments and Licenses. Upon receipt, the city shall return a copy of the notice marked "filed" to each of the partners, if jointly filed; or two copies to the filing partner. Unless the partners jointly file the notice, the partner filing the notice shall, within five days, send a copy of the filed notice to the other partner's last known address. However, this requirement shall not apply if the termination is due to the death of one of the domestic partners.

(c) Effective Termination Date. Termination of a domestic partnership shall be effective upon filing of the Notice of Termination of Domestic Partnership with the City by one or both partners, or on the date of the death of one of the domestic partners.

(d) Notice to Third Parties. Following the termination of a domestic partnership the burden of notification rests with, each former domestic partner who has received or qualified for any benefit or right based upon the existence of a domestic partnership and whose receipt of that benefit or enjoyment of that right has not otherwise terminated, to give prompt notification to any third party who provides such benefit or right that the domestic partnership has terminated. The City shall not be liable for any injury to any third-party by virtue of lack of notice of termination to the domestic partnership, including any third-party which has provided any benefits regarding the domestic partnership.

(e) Failure to Give Notice. Failure to provide notice to third parties as prescribed in this section shall not delay or prevent the termination of the domestic partnership. (Ord. No. 1745-08. Passed 12-8-08, eff. 1-7-09)

109.06 Legal Effect

(a) Registering as domestic partners by two individuals who are also married to one other, in this or in another state, shall under no circumstances, be considered as evidence, knowledge, awareness, or an admission that the partners are not lawfully married and it shall not be given any other legal effect, in this or any other state, with regard to whether the persons are lawfully married.

(b) Nothing in this Chapter shall be interpreted to alter or contravene county, state or federal law.

(c) Nothing in this Chapter shall be construed as recognizing or treating a Declaration of Domestic Partnership as a marriage or a legal status that intends to approximate the design, qualities, significance or effect of marriage.

(Ord. No. 1745-08. Passed 12-8-08, eff. 1-7-09)

109.07 Severability

If any section, subsection, clause or provision of this Chapter is held invalid, the remainder shall not be affected by such invalidity.

(Ord. No. 1745-08. Passed 12-8-08, eff. 1-7-09)